

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

ROBERT W. WILSON and SONIA  
SILVA WILSON, husband and wife,

Plaintiffs,

v.

BATTELLE MEMORIAL  
INSTITUTE, dba PACIFIC  
NORTHWEST NATIONAL  
LABORATORY,

Defendant.

NO: 11-CV-05130-TOR

ORDER GRANTING MOTION FOR  
LEAVE TO AMEND COMPLAINT  
AND MOTION TO SEAL  
CONFIDENTIAL INFORMATION

BEFORE THE COURT is the Plaintiffs' Motion for Leave of Court to Amend Complaint. ECF No. 21. Also before the Court is the Parties Stipulated Motion for Order to Seal Confidential Information. ECF No. 30. This matter was heard without oral argument. The Court has reviewed the motion, the response, the reply, supporting declarations and the Court is fully informed.

Plaintiffs seek to file a second amended complaint adding three causes of action. Plaintiffs contend the information supporting these new causes of action

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MOTION TO SEAL CONFIDENTIAL INFORMATION ~ 1

1 was in part received in the 6,000 pages of discovery they received from the  
2 Defendant on January 18, 2012, five days after the Scheduling Order allowed  
3 amendments to the pleadings. Counsel for the Plaintiffs communicated to  
4 Defendant's counsel the possibility of the amendment as early as February 7, 2012.  
5 ECF No. 29 at 6-7. This communication was followed by several more  
6 communications during February and a formal motion on March 7, 2012.

7 Defendant contends the time to amend pleadings expired on January 13,  
8 2012. Defendant contends the Plaintiffs necessarily possessed all the information  
9 necessary to allege the causes of action all along and thus cannot meet the good  
10 cause standard. Finally, Defendant contends that it would be prejudiced by this  
11 late amendment since discovery has progressed significantly.

12 The Motion to Amend the Amended Complaint in this case involves the  
13 applicability of Rules 15 and 16 of the Federal Rules of Civil Procedure. Rule  
14 15(a)(2) provides that, except in circumstances not present here, "a party may  
15 amend its pleading only with the opposing party's written consent or the court's  
16 leave," which "[t]he court should freely give . . . when justice so requires." Fed. R.  
17 Civ. P. 15(a)(2). Rule 16(b)(4), on the other hand, provides that "[a] schedule  
18 [pursuant to a Rule 16(b)(1) scheduling order] may be modified only for good  
19 cause and with the judge's consent." Fed. R. Civ. P. 16(b)(4).

1 In *Coleman v. Quaker Oats Co.*, 232 F.3d 1271 (9th Cir. 2000), the Ninth  
2 Circuit explained the question of whether the liberal amendment standard of Rule  
3 15(a) or the “good cause” standard of Rule 16 applies to a motion for leave to  
4 amend a complaint depends on whether or not the deadline for amendments in a  
5 Rule 16(b) scheduling order has expired:

6 Generally, Federal Rule of Civil Procedure 15(a) liberally allows for  
7 amendments to pleadings. In this case, however, the district court correctly  
8 found that it should address the issue under Federal Rule of Civil Procedure  
9 16 because it had filed a pretrial scheduling order that established a  
timetable for amending the pleadings, and the deadline had expired before  
[plaintiffs] moved to amend. *See Johnson v. Mammoth Recreations, Inc.*,  
975 F.2d 604, 607-09 (9th Cir. 1992).

10 *Coleman*, 232 F.3d at 1294. The court then explained the Rule 16(b) standard, as  
11 follows:

12 Under Rule 16(b), [the plaintiffs] must show good cause for not having  
13 amended their complaints before the time specified in the scheduling order  
14 expired. *See [Johnson, 975 F.2d]* at 608-09. This standard “primarily  
15 considers the diligence of the party seeking the amendment.” *Id.* at 609.

16 *Coleman*, 232 F.3d at 1294.

17 If good cause is shown, the party must then demonstrate that amendment  
18 was proper under Rule 15. *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604,  
19 608 (9th Cir. 1992). When deciding motions to dismiss, the Ninth Circuit has  
20 repeatedly held that “a district court should grant leave to amend even if no request  
to amend the pleading was made, unless it determines that the pleading could not  
possibly be cured by the allegation of other facts.” *Lopez v. Smith*, 203 F.3d 1122,

1 1130 (9th Cir. 2000). The standard for granting leave to amend is generous.  
2 *United States v. Corinthian Colleges*, 655 F.3d 984, 995 (9th Cir. 2011). The court  
3 considers five factors in assessing the propriety of leave to amend—bad faith,  
4 undue delay, prejudice to the opposing party, futility of amendment, and whether  
5 the plaintiff has previously amended the complaint. *Id.* Additionally, the Court  
6 recognizes the strong public policy favoring disposition of cases on their merits.

7 The Court finds that the Plaintiffs have demonstrated good cause under Rule  
8 16(b) to seek an amendment. Plaintiffs appear to have diligently reviewed the  
9 6,000 pages of discovery for relevant information to support what may have only  
10 been previously suspected. Indeed, had Plaintiffs pleaded these causes of action  
11 prior to having the information to support their assertions, they could easily have  
12 been subject to early dismissal. *See Ashcroft v. Iqbal*, 556 U.S. 662, ---, 129 S.Ct.  
13 1937, 1949 (2009)(Rule 8 of the Federal Rules of Civil Procedure demands more  
14 than an unadorned, the-defendant-unlawfully-harmed-me accusation). Having  
15 found good cause for the amendment, the Court turns to the issue of whether the  
16 amendment is proper under Rule 15(a)'s liberal standard. First, the Court finds no  
17 undue delay, bad faith, or dilatory motive on the part of Plaintiffs. While the  
18 Plaintiffs have previously amended their complaint, the reason for this amendment  
19 was not clearly supportable until discovery progressed. The final factor to consider  
20 is prejudice to the Defendant. While each party may have to supplement its

1 discovery requests to include more specific information concerning these new  
2 causes of action, they are not so different in kind or quality that discovery would  
3 begin anew. Here, the discovery cutoff period has not expired and the bench trial  
4 is not scheduled until November 5, 2012. The Court finds that the minimal  
5 prejudice which may be suffered by the Defendant is outweighed by the other  
6 factors favoring amendment of the complaint and the strong public policy favoring  
7 disposition of cases on the merits.

8 **ACCORDINGLY, IT IS HEREBY ORDERED:**

9 1. Plaintiffs' Motion to Amend the Complaint (ECF No. 21) is

10 **GRANTED.**

11 2. Plaintiffs shall file their Second Amended Complaint forthwith.

12 3. Defendant shall answer the Second Amended Complaint or otherwise  
13 plead as provided in the Rules. The Court does not have before it any  
14 challenge to the sufficiency of the new causes of action and has not  
15 passed judgment upon them.

16 4. The currently scheduled discovery cutoff of May 18, 2012, is extended to  
17 **June 29, 2012.**

18 5. The parties shall supplement their expert witness Rule 26 materials,  
19 including expert witness reports, as they relate to the three new causes of  
20 action only, by **June 18, 2012.**

1 6. The currently scheduled dispositive motions deadline of June 8, 2012, is  
2 extended to **July 6, 2012**.

3 7. *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993),  
4 challenges to the admissibility of expert opinion testimony shall be filed  
5 on or before **July 6, 2012**.

6 8. All other deadlines contained in the Scheduling Order (ECF No. 17)  
7 remain the same.

8 9. The Stipulated Motion for Order to Seal Confidential Information (ECF  
9 No. 30) (signed by Plaintiffs' counsel only) is construed as an unopposed  
10 motion in accordance with the agreed protective order filed in this case,  
11 (ECF No. 20) and is hereby **GRANTED**. The Court finds that good  
12 cause has been established to seal materials supporting a non-dispositive  
13 motion. The District Court Executive is directed to seal **ECF No. 29,**  
14 **pages 5-106 only.**

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1 The District Court Executive is hereby directed to enter this Order and  
2 provide copies to counsel.

3 **DATED** this 18<sup>th</sup> day of April, 2012.

4 *s/ Thomas O. Rice*

5 THOMAS O. RICE  
6 United States District Judge  
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